

AMENDED IN ASSEMBLY JUNE 19, 2012

AMENDED IN SENATE APRIL 26, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1473

**Introduced by Senator Hancock
(Coauthors: Senators DeSaulnier, Leno, and Pavley)**

February 24, 2012

An act to amend Section 2924.8 of the Civil Code, and to amend Sections ~~415.46 and 1161b~~ *415.46, 1161b, and 1161c* of the Code of Civil Procedure, relating to tenants.

LEGISLATIVE COUNSEL'S DIGEST

SB 1473, as amended, Hancock. Tenants: foreclosure and unlawful detainer.

(1) Existing law requires a notice of sale to be posted before any power of sale can be exercised under the power of sale contained in any deed of trust or mortgage. Existing law, until January 1, 2013, requires a resident of property upon which a notice of sale has been posted to be provided a specified notice advising the resident that, among other things, if the person is renting the property, the new property owner may either give the tenant a new lease or rental agreement, or provide the tenant with a 60-day eviction notice, and that other laws may prohibit the eviction or provide the tenant with a longer notice before eviction. Existing law makes it an infraction to tear down the notice within 72 hours of posting. Existing law requires a state government entity to make translations of the notice available in 5 specified languages, for use by a mortgagee, trustee, beneficiary, or authorized agent, in order to satisfy the notice requirements.

This bill would revise certain portions of the notice to instead require a resident of property upon which a notice of sale has been posted to be advised that if the person is renting the property, the new property owner may either give the tenant a new lease or rental agreement, or provide the tenant with a 90-day eviction notice. The bill would require the notice to advise a tenant who has a lease that the new property owner is required to honor the lease unless the new owner will occupy the property as a primary residence or ~~unless the lease was signed within the last 15 days and that the tenant may have the right to stay in the property for longer than 90 days under other limited circumstances.~~ The bill would require the Department of Consumer Affairs to make translations of the notice available, as described above. The bill would provide that these changes to the notice would become operative on March 1, 2013, or 60 days following the issuance of an amended notice translation by the Department of Consumer Affairs Internet Web site, whichever date is later. The bill would extend the operation of these provisions ~~indefinitely until December 31, 2019.~~

By extending the operation of provisions establishing a crime, this bill would impose a state-mandated local program.

(2) Existing law provides that, in an unlawful detainer action, if an owner or owner's agent has obtained service of a prejudgment claim of right to possession, as specified, no occupant of the premises, whether or not that occupant is named in the judgment for possession, may object to the enforcement of the judgment, as specified.

This bill would provide that ~~those in any action for unlawful detainer resulting from a foreclosure sale of a rental housing unit pursuant to specified provisions, the above provisions regarding objection to the enforcement of a judgment~~ do not limit the right of a tenant, ~~subtenant, or occupant~~ *subtenant* to file a prejudgment claim of right of possession or to object to enforcement of a judgment for possession, regardless of whether the tenant, ~~subtenant, or occupant~~ *or subtenant* was served with a prejudgment claim of right to possession, as specified, ~~in the case of an unlawful detainer arising out of, among other circumstances, a foreclosure sale.~~

(3) Existing law, until January 1, 2013, requires a tenant or subtenant in possession of a rental housing unit at the time that property is sold in foreclosure to be provided 60 days' written notice to quit before the tenant or subtenant may be removed from the property, as specified.

This bill would instead require a tenant or subtenant in possession of a rental housing unit under a month-to-month lease *or periodic tenancy*

at the time that property is sold in foreclosure to be provided 90 days' written notice to quit before the tenant or subtenant may be removed from the property. The bill would provide tenants or subtenants holding possession of a rental housing unit under a fixed-term residential lease with entered into before transfer of title at the foreclosure sale the right to possession until the end of the lease term unless the new owner will occupy the property as a primary residence or unless the lease was signed within the last 15 days. The bill would require a residential lease that is entered into 75 days or more after a notice of default against the property has been recorded to contain a notice to advise the potential tenant that the foreclosure process has begun on the property, and that the property may be sold, which will terminate the lease, except in specified circumstances. The bill would also extend the operation of these provisions indefinitely until December 31, 2019.

(4) Existing law, until January 1, 2013, and subject to exceptions, requires that in the case of any foreclosure on a residential property, the immediate successor in interest in the property pursuant to the foreclosure shall attach a cover sheet, as specified, to any notice of termination of tenancy served on a tenant of that property within the first year after the foreclosure sale.

This bill would extend the operation of these provisions until December 31, 2019.

(4)

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924.8 of the Civil Code is amended to
2 read:

3 2924.8. (a) (1) Upon posting a notice of sale pursuant to
4 Section 2924f, a trustee or authorized agent shall also post the
5 following notice, in the manner required for posting the notice of
6 sale on the property to be sold, and a mortgagee, trustee,
7 beneficiary, or authorized agent, concurrently with the mailing of

1 the notice of sale pursuant to Section 2924b, shall send by
2 first-class mail in an envelope addressed to the “Resident of
3 property subject to foreclosure sale” the following notice in English
4 and the languages described in Section 1632:
5

6 Foreclosure process has begun on this property, which may affect
7 your right to continue to live in this property. Twenty days or more
8 after the date of this notice, this property may be sold at
9 foreclosure. If you are renting this property, the new property
10 owner may either give you a new lease or rental agreement or
11 provide you with a 90-day eviction notice. You may have a right
12 to stay in your home for longer than 90 days. If you have a
13 *fixed-term* lease, the new owner must honor the lease unless the
14 new owner will occupy the property as a primary residence or
15 ~~unless the lease was signed within the last 15 days in other limited~~
16 *circumstances*. Also, in some cases and in some cities with a “just
17 cause for eviction” law, you may not have to move at all. *All rights*
18 *and obligations under your lease or tenancy, including your*
19 *obligation to pay rent, will continue after the foreclosure sale.*
20 You may wish to contact a lawyer or your local legal aid office or
21 housing counseling agency to discuss any rights you may have.
22

23 *(2) The amendments to the notice in this subdivision made by*
24 *the act that added this paragraph shall become operative on March*
25 *1, 2013, or 60 days following posting of a dated notice*
26 *incorporating those amendments on the Department of Consumer*
27 *Affairs Internet Web site, whichever date is later.*

28 (b) It shall be an infraction to tear down the notice described in
29 subdivision (a) within 72 hours of posting. Violators shall be
30 subject to a fine of one hundred dollars (\$100).

31 (c) The Department of Consumer Affairs shall make available
32 translations of the notice described in subdivision (a) which may
33 be used by a mortgagee, trustee, beneficiary, or authorized agent
34 to satisfy the requirements of this section.

35 (d) This section shall only apply to loans secured by residential
36 real property, and if the billing address for the mortgage note is
37 different than the property address.

38 ~~(e) The amendments made to subdivision (a), by the act which~~
39 ~~added this subdivision regarding the obligation to provide the~~
40 ~~notice set forth in that subdivision in the languages required by~~

1 ~~Section 1632 shall become operative on March 1, 2013, or 60 days~~
2 ~~following the issuance of an amended notice translation by the~~
3 ~~Department of Consumer Affairs, whichever occurs later.~~

4 *(e) This section shall remain in effect only until December 31,*
5 *2019, and as of that date is repealed, unless a later enacted statute,*
6 *that is enacted before December 31, 2019, deletes or extends that*
7 *date.*

8 SEC. 2. Section 415.46 of the Code of Civil Procedure is
9 amended to read:

10 415.46. (a) In addition to the service of a summons and
11 complaint in an action for unlawful detainer upon a tenant and
12 subtenant, if any, as prescribed by this article, a prejudgment claim
13 of right to possession may also be served on any person who
14 appears to be or who may claim to have occupied the premises at
15 the time of the filing of the action. Service upon occupants shall
16 be made pursuant to subdivision (c) by serving a copy of a
17 prejudgment claim of right to possession, as specified in
18 subdivision (f), attached to a copy of the summons and complaint
19 at the same time service is made upon the tenant and subtenant, if
20 any.

21 (b) Service of the prejudgment claim of right to possession in
22 this manner shall be effected by a marshal, sheriff, or registered
23 process server.

24 (c) (1) When serving the summons and complaint upon a tenant
25 and subtenant, if any, the marshal, sheriff, or registered process
26 server shall make a reasonably diligent effort to ascertain whether
27 there are other adult occupants of the premises who are not named
28 in the summons and complaint by inquiring of the person or
29 persons who are being personally served, or any person of suitable
30 age and discretion who appears to reside upon the premises,
31 whether there are other occupants of the premises.

32 (2) If the identity of such an occupant is disclosed to the officer
33 or process server and the occupant is present at the premises, the
34 officer or process server shall serve that occupant with a copy of
35 the prejudgment claim of right to possession attached to a copy of
36 the summons and complaint. If personal service cannot be made
37 upon that occupant at that time, service may be effected by leaving
38 a copy of a prejudgment claim of right to possession attached to
39 a copy of the summons and complaint addressed to that occupant
40 with a person of suitable age and discretion at the premises, affixing

1 the same so that it is not readily removable in a conspicuous place
2 on the premises in a manner most likely to give actual notice to
3 that occupant, and sending the same addressed to that occupant
4 by first-class mail.

5 (3) In addition to the service on an identified occupant, or if no
6 occupant is disclosed to the officer or process server, or if
7 substituted service is made upon the tenant and subtenant, if any,
8 the officer or process server shall serve a prejudgment claim of
9 right to possession for all other persons who may claim to occupy
10 the premises at the time of the filing of the action by leaving a
11 copy of a prejudgment claim of right to possession attached to a
12 copy of the summons and complaint at the premises at the same
13 time service is made upon the tenant and subtenant, if any, affixing
14 the same so that it is not readily removable in a conspicuous place
15 on the premises so that it is likely to give actual notice to an
16 occupant, and sending the same addressed to “all occupants in care
17 of the named tenant” to the premises by first-class mail.

18 (4) The person serving process shall state the date of service on
19 the prejudgment claim of right to possession form. However, the
20 absence of the date of service on the prejudgment claim of right
21 to possession does not invalidate the claim.

22 (d) Proof of service under this section shall be filed with the
23 court and shall include a statement that service was made pursuant
24 to this section. Service on occupants in accordance with this section
25 shall not alter or affect service upon the tenant or subtenant, if any.

26 (e) (1) If an owner or his or her agent has directed and obtained
27 service of a prejudgment claim of right to possession in accordance
28 with this section, no occupant of the premises, whether or not ~~such~~
29 *that* occupant is named in the judgment for possession, may object
30 to the enforcement of that judgment as prescribed in Section
31 1174.3.

32 ~~(2) Paragraph (1) shall not limit the right of any tenant,~~
33 ~~subtenant, or occupant of the property to file a prejudgment claim~~
34 ~~of right of possession pursuant to Section 1174.25 at any time~~
35 ~~before judgment, or to object to enforcement of a judgment for~~
36 ~~possession as prescribed in Section 1174.3, whether or not the~~
37 ~~tenant, subtenant, or occupant was served with a prejudgment~~
38 ~~claim of right to possession, when the judgment for possession~~
39 ~~arises from an action for unlawful detainer pursuant to Section~~
40 ~~1161a.~~

1 (2) *In any action for unlawful detainer resulting from a*
2 *foreclosure sale of a rental housing unit pursuant to Section 1161a,*
3 *paragraph (1) shall not limit the right of any tenant or subtenant*
4 *of the property to file a prejudgment claim of right of possession*
5 *pursuant to subdivision (a) of Section 1174.25 at any time before*
6 *judgment, or to object to enforcement of a judgment for possession*
7 *as prescribed in Section 1174.3, whether or not the tenant or*
8 *subtenant was served with a prejudgment claim of right to*
9 *possession.*

10 (f) The prejudgment claim of right to possession shall be made
11 on the following form:

NOTICE

EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.

If you live here and you do not complete and submit this form within 10 days of the date of service shown on this form, you will be evicted without further hearing by the court along with the persons named in the summons and complaint.

If you file this form, your claim will be determined in the eviction action against the persons named in the complaint.

If you do not file this form, you will be evicted without further hearing.

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address):	TELEPHONE NO.	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF: DEFENDANT:		
PREJUDGMENT CLAIM OF RIGHT TO POSSESSION		
		CASE NUMBER:

DATE OF SERVICE:
(Date that form is served or delivered, posted and mailed by the officer or process server)

Complete this form only if ALL of these statements are true:

1. You are NOT named in the accompanying Summons and Complaint.
2. You occupied the subject premises on or before the date the unlawful detainer (eviction) complaint was filed.
(The date is in the accompanying Summons and Complaint.)
3. You still occupy the subject premises.

PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify):
2. I reside at (street address, unit no., city and ZIP code):
3. The address of “the premises” subject to this claim is (address):
4. On (insert date): , the landlord or the landlord’s authorized agent filed a complaint to recover possession of the premises. (This date is in the accompanying Summons and Complaint.)
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
8. I was not named in the Summons and Complaint.
9. I understand that if I make this claim of possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. (Filing fee) I understand that I must go to the court and pay a filing fee of \$_____ or file with the court “Application for Waiver of Court Fees and Costs.” I understand that if I don’t pay the filing fee or file the form for waiver of court fees within 10 days from the date of service on the form (excluding court holidays), I will not be entitled to make a claim of right to possession. I also understand that I will have 5 days (excluding court holidays) to file a response to the Summons and Complaint after I file this claim of possession.

NOTICE: If you fail to file this claim, you will be evicted without further hearing.

11. Rental agreement. I have (check all that apply to you):

- a. ☐ an oral rental agreement with the landlord.
- b. ☐ a written rental agreement with the landlord.
- c. ☐ an oral rental agreement with a person other than the landlord.
- d. ☐ a written rental agreement with a person other than the landlord.
- e. ☐ other (explain):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date:

.....
(TYPE OR PRINT NAME)

(SIGNATURE OF CLAIMANT)

NOTICE: If you file this claim to possession, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

NOTICE TO OCCUPANTS

YOU MUST ACT AT ONCE IF ALL THE FOLLOWING ARE TRUE:

- (1) You are not named in the accompanying Summons and Complaint.
- (2) You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed.
- (3) You still occupy the premises.

You can complete and SUBMIT THIS CLAIM FORM within 10 days from the date of service (on the form) at the court where the unlawful detainer (eviction) complaint was filed.

If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), YOU WILL BE EVICTED.

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. If you do not file this claim, you will be evicted without a hearing.

SEC. 3. Section 1161b of the Code of Civil Procedure is amended to read:

1161b. (a) Notwithstanding Section 1161a, a tenant or subtenant in possession of a rental housing unit under a month-to-month lease *or periodic tenancy* at the time the property is sold in foreclosure shall be given 90 days' written notice to quit pursuant to Section 1162 before the tenant or subtenant may be removed from the property as prescribed in this chapter.

(b) ~~(1) Tenants~~ *In addition to the rights set forth in subdivision (a), the tenants or subtenants holding possession of a rental housing unit under a fixed-term residential lease of a rental housing unit at the time that the property is sold at foreclosure entered into before transfer of title at the foreclosure sale shall have the right to possession until the end of the lease term, and all rights and obligations under the lease shall survive foreclosure, except that the tenancy may be terminated upon 90 days' written notice to quit pursuant to subdivision (a) if any of the following conditions apply:*

~~(2) Paragraph (1) shall not apply if a new owner will occupy the unit as a primary residence or if the lease was entered into within 15 days prior to the posting of the notice of sale pursuant to Section 2924f, provided, however, that in either case the new owner shall provide the notice described in subdivision (a).~~

~~(3) Every residential lease entered into 75 days or more after the recording of a notice of default for the property shall include the following notice in English and the languages described in Section 1632:~~

~~Foreclosure proceedings have begun on this property, which may affect your right to continue to live in this property if you sign this lease. This property may be sold at a foreclosure sale in as soon as 20 days, which will terminate this lease. If you rent this property, the new owner may evict you after a 90-day eviction notice. In some cities with a "just cause for eviction" law, you may not have to move.~~

~~(1) The purchaser or successor in interest will occupy the housing unit as a primary residence.~~

~~(2) The lessee is the mortgagor or the child, spouse, or parent of the mortgagor.~~

1 (3) *The lease was not the result of an arms' length transaction.*

2 (4) *The lease requires the receipt of rent that is substantially*
3 *less than fair market rent for the property, except when rent is*
4 *reduced or subsidized due to a federal, state, or local subsidy or*
5 *law.*

6 (c) *The purchaser or successor in interest shall bear the burden*
7 *of proof in establishing that a fixed-term residential lease is not*
8 *entitled to protection under subdivision (b).*

9 (e)

10 (d) *This section shall not apply if any party to the note remains*
11 *in the property as a tenant, subtenant, or occupant.*

12 ~~(d) This section shall not preempt any local ordinance and is in~~
13 ~~addition to any other rights and remedies available to tenants and~~
14 ~~owners as provided by federal, state, and local law.~~

15 (e) *Nothing in this section is intended to affect any local*
16 *just-cause eviction ordinance. This section does not, and shall not*
17 *be construed to, affect the authority of a public entity that otherwise*
18 *exists to regulate or monitor the basis for eviction.*

19 (f) *This section shall remain in effect only until December 31,*
20 *2019, and as of that date is repealed, unless a later enacted statute,*
21 *that is enacted before December 31, 2019, deletes or extends that*
22 *date.*

23 SEC. 4. *Section 1161c of the Code of Civil Procedure is*
24 *amended to read:*

25 1161c. (a) *In the case of any foreclosure on a residential*
26 *property, the immediate successor in interest in the property*
27 *pursuant to the foreclosure shall attach a cover sheet, in the form*
28 *as set forth in subdivision (b), to any notice of termination of*
29 *tenancy served on a tenant of that property within the first year*
30 *after the foreclosure sale. This notice shall not be required if any*
31 *of the following apply:*

32 (1) *The tenancy is terminated pursuant to Section 1161.*

33 (2) *The successor in interest and the tenant have executed a*
34 *written rental agreement or lease or a written acknowledgment of*
35 *a preexisting rental agreement or lease.*

36 (3) *The tenant receiving the notice was not a tenant at the time*
37 *of the foreclosure.*

38 (b) *The cover sheet shall consist of the following notice, in at*
39 *least 12-point type:*

40

1 Notice to Any Renters Living At

2 [street address of the unit]

3 The attached notice means that your home was recently sold in
4 foreclosure and the new owner plans to evict you.

5 You should talk to a lawyer NOW to see what your rights are.
6 You may receive court papers in a few days. If your name is on
7 the papers it may hurt your credit if you do not respond and simply
8 move out.

9 Also, if you do not respond within five days of receiving the
10 papers, even if you are not named in the papers, you will likely
11 lose any rights you may have. In some cases, you can respond
12 without hurting your credit. You should ask a lawyer about it.

13 You may have the right to stay in your home for 90 days or
14 longer, regardless of any deadlines stated on any attached papers.
15 In some cases and in some cities with a “just cause for eviction
16 law,” you may not have to move at all. But you must take the
17 proper legal steps in order to protect your rights.

18 How to Get Legal Help

19 If you cannot afford an attorney, you may be eligible for free
20 legal services from a nonprofit legal services program. You can
21 locate these nonprofit groups at the California Legal Services Web
22 site (www.lawhelpcalifornia.org), the California Courts Online
23 Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting
24 your local court or county bar association.

25
26 (c) If the notice to quit specifies an effective date of at least 90
27 days after the notice is served, without qualification, no cover sheet
28 shall be required, provided that the notice incorporates the text of
29 the cover sheet, as set forth in subdivision (b) in at least 10-point
30 type. The incorporated text shall omit the caption and the first
31 paragraph of the cover sheet and the fourth paragraph of the cover
32 sheet shall be replaced by the following language:

33
34 You may have the right to stay in your home for longer than 90
35 days. If you have a lease that ends more than 90 days from now,
36 the new owner must honor the lease under many circumstances.
37 Also, in some cases and in some cities with a “just cause for
38 eviction law,” you may not have to move at all. But you must take
39 the proper legal steps in order to protect your rights.

40

(d) This section shall remain in effect only until ~~January 1, 2013~~
December 31, 2019, and as of that date is repealed, unless a later
enacted statute, that is enacted before ~~January 1, 2013~~ *December*
31, 2019, deletes or extends that date.

~~SEC. 4.~~

SEC. 5. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.